

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALYSON J. KIRLEIS,)	Civil Action No. 06-1495
)	
Plaintiff,)	JUDGE ARTHUR J. SCHWAB
)	
vs.)	ELECTRONICALLY FILED
)	
DICKIE, MCCAMEY & CHILCOTE, P.C.,)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant, Dickie, McCamey & Chilcote, P.C. (“Defendant”), by and through its undersigned counsel, pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, and hereby files the following Motion for Summary Judgment, stating in support thereof as follows:

1. On November 9, 2006, Plaintiff Alyson J. Kirleis (“Plaintiff”) filed her first Complaint against Defendant at Civil Action No. 06-1495, alleging that she was paid inadequately due to her sex in violation of the Equal Pay Act/Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. (“EPA”), and that she was unlawfully discriminated against in compensation, subjected to a hostile work environment, and retaliated against because of her sex and complaints of discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. (“Title VII”) and the Pennsylvania Human Relations Act, 43 P.S. § 951, et seq. (“PHRA”).

2. On December 18, 2006, Plaintiff filed a second Complaint against Defendant at Civil Action No. 06-1666, making similar allegations to those set forth in her first Complaint regarding alleged retaliation but with more factual detail.

3. The District Court consolidated the actions on January 12, 2007.

4. Because the Court must first determine whether Plaintiff is an employer or an employee under the EPA and/or Title VII to ascertain whether it has federal question jurisdiction, at the initial case management conference held on June 11, 2009, this Court granted Defendant's motion for bifurcation of discovery and dispositive motion proceedings and directed the parties that discovery and dispositive motions would be conducted in two phases, with the initial phase being limited to issues relating solely to Plaintiff's status as an employer/owner or employee and events occurring subsequent to January 1, 2001.

5. The parties then engaged in phase one discovery which closed on July 15, 2009.

5. Defendant now moves for summary judgment, noting that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

6. There are no genuine issues of material fact that remain to be litigated.

7. Based upon all material facts adduced during phase one discovery, it is clear that Defendant is entitled to a judgment as a matter of law, because Plaintiff cannot meet her burden to establish that she is an employee within the meaning of the applicable statutes.

6. Consequently, this Court is without jurisdiction over these matters as a result of Plaintiff's status as a Shareholder/Director, *i.e.*, an "employer" rather than an "employee," and Plaintiff is totally excluded from coverage under all of the statutes under which she brings these actions.

7. Defendant incorporates by reference its Concise Statement Of Undisputed Material Facts, Brief In Support Of Its Motion For Summary Judgment, as well as its Appendix Of Exhibits, which are being filed simultaneously under seal with this Motion.

WHEREFORE, Defendant respectfully requests that this Court enter an Order granting summary judgment in its favor, dismissing each of Plaintiff's claims with prejudice.

Dated: July 30, 2009

Respectfully submitted,

JACKSON LEWIS LLP

/s/ Sunshine R. Fellows

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2009, the foregoing *BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT* was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel specified below, and additionally have sent a copy of the forgoing via U.S. Mail, postage prepaid, to:

Edward B. Friedman, Esquire
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/s/ Sunshine R. Fellows
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